

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 22, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2210

Introduced by Assembly Member Fuentes

February 18, 2010

An act to add Section 633.8 to the Penal Code, relating to interception of communications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2210, as amended, Fuentes. Intercepted communications: hostage taking and barricading.

Existing law prohibits a person from intentionally eavesdropping upon or recording a confidential communication by means of any electronic amplifying device or recording device without the consent of all parties to the communication. Under existing law, specified law enforcement agents may make a written application to a judge to authorize the interception of a wire, electronic pager, or electronic cellular telephone communication. In certain instances the application can be made informally and granted orally if an emergency situation exists, as specified.

This bill would authorize a peace officer who is authorized by a county district attorney or the Attorney General to authorize the use of an electronic amplifying or recording device to eavesdrop on or record, or both, any oral communication in an emergency situation involving a barricade situation or hostage situation, as defined, if the peace officer reasonably determines that an emergency situation exists, that the

emergency situation requires that the eavesdropping occur immediately, and that there are grounds upon which an order could be obtained in regard to certain specified offenses. This bill would require a written application to be made seeking to authorize the eavesdropping within 48 hours.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 633.8 is added to the Penal Code, to read:
2 633.8. (a) It is the intent of the Legislature in enacting this
3 section to provide law enforcement with the ability to use electronic
4 amplifying or recording devices to eavesdrop on and record the
5 otherwise confidential oral communications of individuals within
6 a location when responding to an emergency situation that involves
7 the taking of a hostage or the barricading of a location. It is the
8 intent of the Legislature that eavesdropping on oral
9 communications pursuant to this section comply with paragraph
10 (7) of Section 2518 of Title 18 of the United States Code.

11 (b) Notwithstanding the provisions of this chapter, and in
12 accordance with federal law, a designated peace officer described
13 in subdivision (c) may use, or authorize the use of, an electronic
14 amplifying or recording device to eavesdrop on or record, or both,
15 any oral communication within a particular location in response
16 to an emergency situation involving the taking of a hostage or
17 hostages or the barricading of a location if all of the following
18 conditions are satisfied:

19 (1) The officer reasonably determines that an emergency
20 situation exists involving the immediate danger of death or serious
21 physical injury to any person, within the meaning of Section
22 2518(7)(a)(i) of Title 18 of the United States Code.

23 (2) The officer reasonably determines that the emergency
24 situation requires that the eavesdropping on oral communication
25 occur immediately.

26 (3) There are grounds upon which an order could be obtained
27 pursuant to Section 2516(2) of Title 18 of the United States Code
28 in regard to the offenses enumerated therein.

29 (c) Only a peace officer who has been designated by either a
30 district attorney in the county where the emergency exists, or by

1 the Attorney General to make the necessary determinations
2 pursuant to paragraphs (1), (2), and (3) of subdivision (b) may
3 make those determinations for purposes of this section.

4 (d) If the determination is made by a designated peace officer
5 described in subdivision (c) that an emergency situation exists, a
6 peace officer shall not be required to knock and announce his or
7 her presence before entering, installing, and using any electronic
8 amplifying or recording devices.

9 (e) If the determination is made by a designated peace officer
10 described in subdivision (c) that an emergency situation exists and
11 an eavesdropping device has been deployed, an application for an
12 order approving the eavesdropping shall be made within 48 hours
13 of the beginning of the eavesdropping and shall comply with the
14 requirements of Section 629.50. A court may grant an application
15 authorizing the use of electronic amplifying or recording devices
16 to eavesdrop on and record otherwise confidential oral
17 communications in barricade or hostage situations where there is
18 probable cause to believe that an individual is committing, has
19 committed, or is about to commit an offense listed in Section
20 2516(2) of Title 18 of the United States Code.

21 (f) The contents of any oral communications overheard pursuant
22 to this section shall be recorded on tape or other comparable device.
23 The recording of the contents shall be done so as to protect the
24 recording from editing or other alterations.

25 (g) For purposes of this section, a “barricading” occurs when a
26 person refuses to come out from a covered or enclosed position.
27 Barricading also occurs when a person is held against his or her
28 will and the captor has not made a demand.

29 (h) For purposes of this section, a “hostage situation” occurs
30 when a person is held against his or her will and the captor has
31 made a demand.

32 (i) A judge shall not grant an application made pursuant to this
33 section in anticipation that an emergency situation will arise. A
34 judge shall grant an application authorizing the use of electronic
35 amplifying or recording devices to eavesdrop on and record
36 otherwise confidential oral communications in barricade or hostage
37 situations where there is probable cause to believe that an
38 individual is committing, has committed, or is about to commit an
39 offense listed in Section 2516(2) of Title 18 of the United States
40 Code, and only if the peace officer has fully complied with the

1 requirements of this section. If an application is granted pursuant
2 to this section, an inventory shall be served pursuant to Section
3 629.68.

4 (j) This section does not require that a peace officer designated
5 pursuant to subdivision (c) undergo training pursuant to Section
6 629.94.

7 (k) A peace officer who has been designated pursuant to
8 subdivision (c) to use an eavesdropping device shall cease use of
9 the device upon the termination of the barricade or hostage
10 situation, or upon the denial by a judge of an application for an
11 order to approve the eavesdropping, whichever is earlier.

12 (l) Nothing in this section shall be deemed to affect the
13 admissibility or inadmissibility of evidence-at-trial.